KEMAJUAN TAMAN MIN SDN. BHD.

v.

PENTADBIR TANAH DAERAH KUALA MUDA, KEDAH

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD HISHAMUDIN BIN MOHD YUNUS JC
[ORIGINATING MOTION NO. 25-08-94]
22 JUNE 1994

LAND LAW: *Registrar's caveat - Section 320 National Land Code Act 58/65 - Power of Registrar to enter Registrar's caveat - Refusal by Registrar to cancel caveat - Appeal - Section 321(3)(c) and s. 418 National Land Code -Land purported to have been sold and transferred to third parties by original registered owners - Subsequently sold and transferred from third parties to applicant - Allegations of fraud - Writ of summons filed by registered owners against purported purchasers and applicant on ground of fraud -Three of original owners have already died at time to transfer to third partes -Thumb prints affixed on transfer form - Whether applicant bona fide purchaser for value - Whether issues can be determined on affidavit evidence.*

This was an appeal by the applicant, a housing developer, against the refusal of the District Land Administrator to cancel a registrar's caveat which was entered in respect of a piece of land in Mukim Sg. Petani on 7 June 1992 for the purpose of the prevention of fraud.

Held:

[1] In view of the fact that a writ had already been filed by the original owners of the land alleging fraud against the applicant and several others, it would not be appropriate for the District Land Administrator or this Court to make any determination in this application on the question as to whether or not the applicant was a *bona fide* purchaser for value.

[2] The question as to whether or not the applicant was a *bona fide* purchaser for value ought not to be determined one way or the other solely an affidavit evidence. Judging from the affidavits and the statement of claim, there can be no doubt that there are serious issues to be tried. It is just that the issues be determined by the civil suit rather than by this proceeding.

[Application dismissed with costs]

Legislation referred to:
National Land Code 1965, ss. 320(1), 321(3)(c), 418

For the appellant - Sharihah binti Mustafa; M/s Hj Mahmud & Partners
For the respondent - Ahmad Zaidi bin Ibrahim; Senior Federal Counsel

JUDGMENT

Mohd Hishamudin bin Mohd Yunus JC:
This is an appeal by the applicant, a housing developer, against the refusal of the District Land Administrator (Pentadbir Tanah Daerah - hereinafter shall be referred to as the "PTD"), Kuala Muda, Kedah, to cancel a Registrar's caveat which was entered in respect of a piece of land known as SPK 1382 Lot 1520 Mukim Sg. Petani on 7 June 1992 for the purpose of the prevention of fraud.

The power of the PTD to enter a Registrar's caveat is provided for by s. 320 (1) of the National Land Code. This provision reads:

Circumstances in which Registrar's caveats may be entered.

320. (1) Subject to sub-section (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable -

(a) for the prevention of fraud or improper dealing;

...

Originally, this land belonged to nine persons, namely:

1. Munah bt. Ismail	36/182 bhg.
2. Zabedah bt. Abdul Rahman	16/182 bhg.
3. Siti Aishah bt. Awang	16/182 bhg.
4. Kalsom bt. Abdullah	16/182 bhg.
5. Zainab bt. Mat Salleh	8/182 bhg.
6. Awang bin Ismail	16/182 bhg.
7. Idris bin Awang	20/182 bhg.
8. Ali bin Yaacob	50/182 bhg.
9. Abd. Rahman bin Taib	4/182 bhg.

According to the records of the Land Office registry, it would appear that six of the above persons, namely:

1. Munah bt. Ismail
2. Zabedah bt. Abdul Rahman
3. Siti Aishah bt. Awang
4. Kalsom bt. Abdullah
5. Zainab bt. Mat Salleh
6. Awang bin Ismail

transferred their shares (108/182) to one Teoh Weng Kooi for a consideration of RM202,000. The Form 14A was executed on 7 January 1991 and the transfer was registered on 25 February 1992. It would appear from the records that the Form 14A was executed on the said date by these six persons by affixing their thumbprints on the Form before the Pentadbir Tanah Daerah Kota Setar, Kedah, who acted as the witness.

It also appears from the records of the Land Office registry that the remaining three persons, namely

7. Idris bin Awang
8. Ali bin Yaacob
9. Abd. Rahman bin Taib

transferred their shares (72/182) to one Md. Zain bin Din on the same date i.e. 25 February 1992 for a consideration of RM200,000. The Form 14A was executed on 15 February 1992 by one Othman bin Hj. Husain, the attorney of these three persons, before the Pentadbir Tanah Daerah, Kuala Muda, who acted as the witness.

Thereafter, on the same day (25 February 1992) the said Teoh Weng Kooi and Md. Zain bin Din each entered into a separate sale and purchase agreement with the applicant whereby each sold his respective share to the applicant. Teoh sold his 108/182 share to the applicant for RM202,000 while Md. Zain sold his 72/182 share to the applicant for RM200,000. Two

days later (i.e. on 27 February 1992) the respective Form 14A was executed by these two persons in favour of the applicant, the purchaser, attested by a solicitor, Sayang binti Idris. The transfers were registered on 9 March 1992.

However, on 28 March 1992, pursuant to the application of one Bakri bin Salleh, the PTD Kuala Muda entered a private caveat in respect of the land. In his statutory declaration (submitted with the application), Bakri stated that he is the son of Siti Aishah binti Hj. Awang (one of the nine original owners) and that a fraud had been committed in respect of the transfer by the six original owners to Teoh Weng Kooi in that at the time of the transfer the following three original owners, namely:

4. Kalsom bt. Abdullah
5. Zainab bt. Mat Salleh
6. Awang bin Ismail

were already dead. They had died in 1988, 1970 and 1989 and therefore they could not have affixed their thumbprints on the transfer form. Subsequently, based on the above statutory declaration, the PTD Kuala Muda (the respondent) entered a Registrar's caveat on 7 June 1992.

On 2 August 1992, when the applicant made a search at the Land Office, it came to know of the Registrar's caveat.

On 20 February 1994 the applicant's solicitors wrote to the PTD Daerah Kuala Muda applying for the cancellation of the Registrar's caveat on the ground that the applicant had bought the relevant share in the land in question from the said Teoh Weng Kooi, and not from the original owners, and as such it was a *bona fide* purchaser for value. By a letter dated 6 March 1994, the PTD Kuala Muda replied informing the applicant that its application for the cancellation of the Registrar's caveat was rejected. Hence the appeal to this Court by the applicant pursuant to s. 321(3)(c) and s. 418 of the National Land Code.

Section 321(3)(c) states:

> [321] (3) (c) A Registrar's caveat shall continue in force until it is cancelled by the Registrar
>
> (a) ...
>
> ...
>
> (c) pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b).

Section 418 reads:

> Appeals to the Court.
>
> 418.(1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time, within the three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section "decision" includes any act, omission, refusal, direction or order.

Meanwhile, on 6 February 1994 a writ had been filed in the High Court Alor Setar (Civil Suit No. 22-11-94) by six of the original nine owners, namely:

1. Munah bt. Ismail
2. Zabedah bt. Abdul Rahman
3. Siti Aishah bt. Awang
4. Idris bin Awang
5. Ali bin Yaacob
6. Abd. Rahman bin Taib,

naming the applicant, Teoh Weng Kooi, Md. Zain bin Din and the following:

4. Othman bin Haji Husin
5. PTD, Daerah Kota Setar
6. PTD, Daerah Kuala Muda.

as defendants. In the statement of claim, the plaintiffs allege, *inter alia,* fraud on the part of the applicant, Teoh, Md. Zain and Othman. And the plaintiffs claim, *inter alia,* for a declaration that the plaintiffs' title to the land is not adversely affected by the transfer to the applicant and also for a declaration that the transfer of the land to the applicant is null and void.

It is my opinion that, in view of the fact that a writ has already been filed by the original owners alleging fraud against the applicant and several others, it would not be appropriate for the PTD or this Court to make any determination in this application on the question as to whether or not the applicant was a *bona fide* purchaser for value. Moreover, I do not think that the question ought to be determined one way or the other solely on affidavit evidence. Judging from the affidavits and the statement of claim, there can be no doubt that there are serious issues to be tried. Therefore, in my view, it is just that the issues be determined by the civil suit rather than by this proceeding.

This application is therefore dismissed with costs.